

### **REMARKS**

With the cancellation of claim 9 and the addition of claim 17, claims 10 to 14, 16, and 17 are now pending in the above-referenced application.

Claims 9, 10, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,764,365 to Finarov ("Finarov I") in view of United States Patent No. 5,333,052 to Finarov ("Finarov II"), United States Patent No. 3,985,447 to Aspnes ("Aspnes"), and Japanese Patent No. 5-280937 to Kawahira ("Kawahira"). Claim 9 has been canceled, rendering moot the present rejection with respect to claim 9. Claim 10 has been amended herein to be in independent form. Claim 10 recites that an angle of reflection is calculated from position data and distance data with an evaluation stage. The Examiner refers to column 11, lines 7 to 21 of Finarov I as allegedly disclosing or suggesting this feature. However, while the referenced section may provide for a position-sensitive detector (PSD) with which an angle may be measured by determining the particular position on the PSD at which a light spot is located, nowhere does Finarov I disclose or suggest using distance data in the angle measurement determination.

As for Finarov II, Aspnes, and Kawahira, none of these references overcomes the deficiency of Finarov I. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 14 and 16 have been amended to depend from claim 11 instead of from claim 9. Accordingly, claims 14 and 16 are patentable over the references relied upon by the Examiner for the same reasons set forth below in support of the patentability of claim 11. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (any dependent claim that depends from a non-obvious independent claim is non-obvious). Accordingly, withdrawal of this rejection is respectfully requested.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Finarov I in view of Finarov II, Aspnes, Kawahira, and United States Patent No. 4,999,014 to Gold et al. ("Gold et al."). Gold et al. do not overcome the deficiency of the combination of Finarov I, Finarov II, Aspnes, and Kawahira noted above in support of the patentability of claim 10. Claim 11 includes subject matter similar to that of claim 10. Accordingly, the combination of Finarov I, Finarov II, Aspnes, Kawahira, and Gold et al. does not disclose or suggest all of the features recited in claim 11, and therefore does not render unpatentable claim 11. (The Examiner additionally refers to column 5, line 20 to 35 of Finarov I as allegedly disclosing or suggesting calculating an angle of reflection from position data and

distance data with an evaluation stage, but this appears to be a mistake since the referenced section is not at all related to this feature.)

Furthermore, the Examiner admits that the combination of Finarov I, Finarov II, Aspnes, and Kawahira does not disclose or suggest sensing of intensity changes and position data with the same photodetector, and instead refers to Gold et al. as allegedly disclosing or suggesting this feature. However, Gold et al. should not have been used in this rejection because it is non-analogous art with respect to the claimed invention. In order for a reference to be used against a claim in a prior art rejection, the reference must either (1) be from the same field of endeavor as Applicant's invention, or (2) if not from the same field of endeavor, be reasonably pertinent to the problem with which the Applicant is concerned. *See* M.P.E.P. § 2141.01(a). Applicants' invention pertains to an ellipsometer; Gold et al. pertains to a device for interferometric measurement, which is fundamentally different than an ellipsometer as explained in Gold et al. at column 1, lines 39 to 55. They are therefore not of the same field of endeavor. For this additional reason, it is respectfully submitted that the combination of Finarov I, Finarov II, Aspnes, Kawahira, and Gold et al. does not render unpatentable claim 11.

Furthermore, a person of ordinary skill in the art seeking to modify the ellipsometer of Finarov I would not look to the field of interferometric measurement since they are of different fields of endeavor. For at least this reason, it is submitted that there is no suggestion in the prior art to combine Finarov I with Gold et al. For this additional reason, it is respectfully submitted that the combination of Finarov I, Finarov II, Aspnes, Kawahira, and Gold et al. does not render unpatentable claim 11.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Finarov I in view of Finarov II, Aspnes, Kawahira, and United States Patent No. 5,838,432 to Tokuhashi. Claim 12 has been amended herein to be in independent form and to clarify that the two position-sensitive photodetectors are arranged at *different* distances from the incidence point. Since the combination of Finarov I, Finarov II, Aspnes, Kawahira, and Tokuhashi does not disclose or suggest this feature, it is respectfully submitted that the combination of Finarov I, Finarov II, Aspnes, Kawahira, and Tokuhashi does not render unpatentable claim 12 (or any of its dependent claims, i.e., claim 13 and new claim 17). Accordingly, withdrawal of this rejection is respectfully requested.

New claim 17 has been added herein. It is respectfully submitted that new claim 17 does not add any new matter and is fully supported by the present application, including the Specification, e.g., at page 3, lines 21 to 23. It is respectfully submitted that claim 17 is patentable over the references relied upon for at least the same reasons set forth above in support of the patentability of claim 12 from which claim 17 depends.

It is respectfully submitted that the subject matter of the present application is new, non-obvious, and useful. Prompt consideration and allowance of the application are respectfully requested.

Respectfully submitted,  
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